IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6689 OF 2006

Shekhar Hemant Muppid. .. Petitioner.

vs.

Shruti Shekhar Muppid. . .. Respondent.

Mr. G.S. Godbole for petitioner.

Mr. V.M. Parshurami for respondent.

CORAM : A.P. DESHPANDE, J.

DATE : 14th December, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner husband instituted Hindu Marriage Petition against the respondent wife bearing No. 12 of 2000 at Alibag which is now transferred to Mahad and is pending in the Court of the Civil Judge, Senior Division at that place. The Hindu Marriage Petition filed by the petitioner is for dissolution of the marriage on the ground of cruelty. The respondent wife as well, at a later point of time filed a Hindu Marriage Petition No.

56 of 2003 in a Court at Solapur. The marriage was solemnised at Pune. The petitioner had filed the marriage petition at Alibag which came to be transferred to Mahad, as at that point of time the petitioner was serving as a Branch Manager within the jurisdiction of the said Court wherein the parties last resided together. In the intervening period the petitioner has been transferred to Pune. In the above fact situation, the present petitioner moved an application under Section 10 of the Civil Procedure Code seeking stay of the proceeding of HMP No. 56 of 2003 filed by the respondent wife for claiming a relief of restitution of conjugal rights. It is the case of the present petitioner husband that the matter in issue in the earlier instituted suit is substantially and directly in issue in a suit filed later in point of time and hence, Section 10 has an application. Rejection of the application moved by the petitioner husband has given rise to the filing of this writ petition.

3. During the course of hearing, the learned counsel appearing for the respondent submitted that instead of making the parties litigate at different places and/or instead of going into the question whether the matter in issue in the earlier instituted suit is substantially and directly in issue in a subsequent suit, it would be in the fitness of things and in furtherance of cause of

justice if both the suits are tried at one place and decided simultaneously. The learned counsel appearing for the petitioner has submitted that he has no objection if the petitions are transferred to the Family Court at Pune and in that eventuality the petitioner is ready to pay the travelling expenses of the respondent wife along with one escort on the date on which the respondent will be attending the court at Pune. However, this is not the end of the matter. The learned counsel for the petitioner strenuously urged that as his suit is filed prior in point of time, the said matter need to be decided earlier so that an issue answered in the earlier instituted suit could operate as res judicata in the subsequent suit filed by the respondent wife. I do not think that the trial of the two suits separately, after transfer of the same to one court would subserve ends of justice. Cause of justice would advance if both the matters are tried simultaneously by the same Court so that all issues can be thrashed out and a decisive adjudication on all the issues could be obtained. It will not be out of place to state that though no specific application has been filed in writing under Section 24 of the Civil Procedure Code, the petitioner was put on notice of an oral request made by the learned counsel for the respondent yesterday and the matter is taken up today by informing the parties that the court is inclined to consider the oral prayer made

for transfer of the cases from the Court at Mahad and Solapur for their trial at Pune.

4. In the result, the writ petition is partly allowed. The impugned order passed by the Civil Judge, Senior Division, Solapur rejecting the application moved by the petitioner for stay of the proceeding under Section 10 is quashed and set aside. I direct that HMP No. 56 of 2003 pending on the file of the Civil Judge, Senior Division in the court at Solapur so also HMP No. 12 of 2000 pending on the file of the Civil Judge, Senior Division, Mahad be transferred for their trial and decision to a Family Court at Pune. On transfer of the said HMPs to the Family Court at Pune, the Principal Judge, Family Court, Pune shall assign the two cases to one Court having jurisdiction to adjudicate the matters for their simultaneous trial and decision in accordance with law.

5. Rule is made absolute in the above terms. The Court trying the matters shall quantify the costs of travelling of the respondent wife along with one escort from Solapur to Pune.

(A.P. Deshpande, J.)